



Reprinted  
February 13, 2009

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## SENATE BILL No. 505

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DIGEST OF SB 505 (Updated February 12, 2009 2:25 pm - DI 92)

**Citations Affected:** IC 30-4; IC 34-30.

**Synopsis:** Trustee duties concerning life insurance. Provides that unless a trust document provides otherwise, a trustee does not have the following duties under the Indiana uniform prudent investor act with respect to the acquisition or retention of any contract of life insurance: (1) a duty to determine whether a contract of insurance is or remains a proper investment; (2) a duty to exercise policy options, including investment options, available under a contract of insurance; or (3) a duty to diversify if a contract of insurance is the sole or a major asset of a trust.

**Effective:** July 1, 2009.

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**Zakas, Holdman, Broden, Walker**

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January 15, 2009, read first time and referred to Committee on Insurance and Financial Institutions.  
February 2, 2009, reported favorably — Do Pass.  
February 12, 2009, read second time, amended, ordered engrossed.

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SB 505—LS 7218/DI 92+



First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 505

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A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 30-4-3.5-1, AS AMENDED BY P.L.61-2008,  
2       SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2009]: Sec. 1. (a) Except as otherwise provided in ~~subsection~~  
4       **subsections (b) and (d)**, a trustee who invests and manages trust assets  
5       owes a duty to the beneficiaries of the trust to comply with the prudent  
6       investor rule set forth in this chapter.

7       (b) The prudent investor rule, a default rule, may be expanded,  
8       restricted, eliminated, or otherwise altered by the provisions of a trust.  
9       A trustee is not liable to a beneficiary to the extent that the trustee  
10      acted in reasonable reliance on the provision of the trust.

11      (c) This chapter applies to a trustee or escrow agent, acting as  
12      fiduciary, of:

- 13           (1) a perpetual care fund or an endowment care fund established  
14           under IC 23-14-48-2;  
15           (2) a prepaid funeral plan or funeral trust established under  
16           IC 30-2-9;  
17           (3) a funeral trust established under IC 30-2-10; or

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(4) a trust or escrow account created from payments of funeral, burial services, or merchandise in advance of need, as described in IC 30-2-13.

**(d) Except as provided in subsections (e) and (f), the duties of a trustee with respect to the acquisition, or retention of any contract of insurance on the life or lives of a settlor or a settlor's spouse, or both do not include the following:**

**(1) A duty to determine whether a contract of insurance is or remains a proper investment.**

**(2) A duty to exercise policy options, including investment options, available under a contract of insurance.**

**(3) A duty to diversify if a contract of insurance is the sole or a major asset of a trust.**

**A trustee is not liable to any person for not determining whether a contract of insurance is or remains a proper investment, for not exercising policy options, including investment options, available under a contract of insurance, or for not diversifying a trust in which a contract of insurance is the sole or a major asset of the trust.**

**(e) With respect to a trust established before July 1, 2009, subsection (d) applies to the trust only if a trust settlor is still living and:**

**(1) the trustee of the trust notifies the settlor in writing that subsection (d) will apply to the trust unless the settlor provides to the trustee, less than sixty (60) days after the settlor receives the trustee's notice under this subdivision, a written objection to the application of subsection (d) to the trust; and**

**(2) the settlor does not provide to the trustee, less than sixty (60) days after the settlor receives the trustee's notice under subdivision (1), a written objection to the application of subsection (d) to the trust.**

**(f) The exclusion of a particular duty under subsection (d) does not apply to a trustee if the trust administered by the trustee specifically provides that the trustee has that duty.**

SECTION 2. IC 34-30-2-131, AS AMENDED BY P.L.238-2005, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 131. (a) IC 30-4-3-1.5 (Concerning actions of a trustee who does not know that a trust has been revoked or amended).

(b) IC 30-4-3-6.5 (Concerning actions of a trustee who does not know of the happening of an event that affects the trust).

(c) IC 30-4-3-11 (Concerning trustees and beneficiaries of a trust in

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- 1 certain circumstances).
- 2 (d) IC 30-4-3.5-1(d) (Concerning trustees and life insurance
- 3 contracts).

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## COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 505, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 505 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 10, Nays 0.

## SENATE MOTION

Madam President: I move that Senate Bill 505 be amended to read as follows:

Page 1, line 3, strike "subsection" and insert "**subsections**".

Page 1, line 4, delete "," and insert "**and (d)**".

Page 2, line 4, delete "duty" and insert "**duties**".

Page 2, line 5, delete "acquiring or retaining a" and insert "**the acquisition, or retention of any**".

Page 2, line 6, after "life" insert "**or lives**".

Page 2, line 6, delete "spouse does" and insert "**spouse, or both do**".

Page 2, line 12, after "diversify" insert "**if**".

Page 2, line 12, delete "insurance." and insert "**insurance is the sole or a major asset of a trust.**".

Page 2, delete lines 13 through 18, begin a new line blocked left and insert:

**"A trustee is not liable to any person for not determining whether a contract of insurance is or remains a proper investment, for not exercising policy options, including investment options, available under a contract of insurance, or for not diversifying a trust in which a contract of insurance is the sole or a major asset of the trust."**

Page 2, line 20, delete "if:" and insert "**if a trust settlor is still living and:**".

(Reference is to SB 505 as printed February 3, 2009.)

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